

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CAMPAIGN FOR ACCOUNTABILITY,**  
611 Pennsylvania Avenue SE, #337  
Washington, DC 20003,

Plaintiff,

v.

**U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,**  
200 Independence Avenue SW  
Washington, DC 20201,

Defendant.

Civil Case No. 18-cv-466

**COMPLAINT**

1. Plaintiff Campaign for Accountability brings this action against the U.S. Department of Health and Human Services under the Freedom of Information Act, 5 U.S.C. § 522 (“FOIA”), and the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201 and 2202.

3. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant failed to comply with the applicable time-limit provisions of FOIA, Campaign for Accountability is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining Defendant from continuing to withhold records and ordering the production of records improperly held.

### **PARTIES**

5. Plaintiff Campaign for Accountability (“CfA”) is a non-partisan organization primarily engaged in disseminating information to the public. CfA uses research, litigation, and communications to expose misconduct and malfeasance in public life. Through research and FOIA requests, CfA uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government, local and state governments, and other public actors through reports, press releases, and other media.

6. Defendant the U.S. Department of Health and Human Services (“HHS”) is a department of the executive branch of the U.S. government, headquartered in Washington, D.C. and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records CfA seeks.

### **STATEMENT OF FACTS**

7. On November 8, 2017, CfA submitted FOIA requests to HHS seeking documents and records related to the support of certain organizations and individuals for the Trump administration’s and Congress’s efforts to repeal and replace the Affordable Care Act (“ACA”).

8. The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence HHS as it counsels the Trump administration

and Congress on health care reform and on future funding for Planned Parenthood. These matters are of paramount public concern.

*HHS De-Funding Planned Parenthood FOIA Request*

9. On November 8, 2017, CfA submitted a FOIA request to HHS (“HHS De-Funding Planned Parenthood FOIA Request”) seeking:

- a. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the Affordable Care Act (“ACA”).
- b. All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the ACA.
- c. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.
- d. All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.

10. The request sought all responsive records from January 20, 2017 to the date of the search. A copy of the HHS De-Funding Planned Parenthood Request is attached hereto as Exhibit A and incorporated herein.

11. The HHS De-Funding Planned Parenthood Request was assigned tracking number **2018-00216-FOIA-OS**. As of February 21, 2018, the status of the request was listed as “Assigned for Processing.” CfA has not received any further communication from HHS regarding this request.

*HHS Preventive Health Services FOIA Request*

12. On November 8, 2017, CfA submitted a FOIA request to HHS (“HHS Preventive Health Services FOIA Request”) seeking:

- a. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America about the May 4 “Promoting Free Speech and Religious Liberty” executive order, the HHS rules that are being drafted in response to that order, or any other efforts to alter or weaken the Affordable Care Act’s contraceptive mandate.
- b. All calendar entries reflecting meetings between HHS and representatives of Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America about the May 4 “Promoting Free Speech and Religious Liberty” executive order, the HHS rules that are being drafted in response to that order, or any other efforts to alter or weaken the Affordable Care Act’s contraceptive mandate

13. The request sought all responsive records from January 20, 2017, to the date of the search. A copy of the HHS Preventive Health Services FOIA Request is attached hereto as Exhibit B and incorporated herein.

14. The HHS Preventive Health Services FOIA Request was assigned tracking number **2018-00217-FOIA-OSB**. As of February 21, 2018, the status of the request was listed as

“Assigned for Processing.” CfA has not received any further communication from HHS regarding this request.

*Exhaustion of Administrative Remedies*

15. Through HHS’s failure to produce the requested documents or otherwise respond within twenty business days, CfA has exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) and seeks immediate judicial review.

16. As of the date of this Complaint, Defendant has failed to (a) notify CfA of any determination regarding the requests, including the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Search for Responsive Records**

17. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth therein.

18. CfA properly requested records within the possession, custody and control of the Defendant.

19. Defendant is an agency subject to FOIA and must, therefore, make reasonable efforts to search for the requested records.

20. Defendant has failed to promptly review agency records for the purpose of locating those records which are responsive to CfA’s FOIA requests.

21. Defendant's failure to conduct adequate searches for responsive records violates FOIA.

22. Plaintiff CfA is, therefore, entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to CfA's FOIA requests.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

23. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

24. CfA properly requested records within the possession, custody, and control of Defendant.

25. Defendant is an agency subject to FOIA and, therefore, must release, in response to a FOIA request, any non-exempt records and provide a lawful reason for withholding any materials.

26. Defendant is wrongfully withholding non-exempt agency records requested by CfA by failing to produce non-exempt records responsive to its FOIA requests.

27. Defendant is wrongfully withholding non-exempt agency records requested by CfA by failing to segregate exempt information in otherwise non-exempt records responsive to CfA's FOIA requests.

28. Defendant's failure to provide all non-exempt responsive records violates FOIA.

29. Plaintiff CfA is, therefore, entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indices justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

30. WHEREFORE, CfA respectfully requests the Court to:

- a. Order Defendant to conduct searches reasonably calculated to uncover all records responsive to CfA's FOIA requests;
- b. Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to CfA's FOIA requests and indices justifying the withholding of any responsive records withheld under claim of exemption;
- c. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to CfA's FOIA requests;
- d. Award CfA the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant CfA such other relief as the Court deems just and proper.

Dated: February 27, 2018

Respectfully submitted,

BAKER & HOSTETLER LLP

By: s/ Carey S. Busen  
Casey Busen (DC Bar: 982217)  
[cbusen@bakerlaw.com](mailto:cbusen@bakerlaw.com)

1050 Connecticut Avenue, NW  
Suite 1100  
Washington, D.C. 20036-5403

Attorneys for Plaintiff  
CAMPAIGN FOR ACCOUNTABILITY,  
611 Pennsylvania Avenue SE, #337  
Washington, DC 20003



# EXHIBIT A

## FOIA request re: health care reform

KO ✓

Katie O'Connor

Wed 11/8/2017, 10:53 AM

FOIARequest@hhs.gov ✓



Reply all | ✓

FOIA

You forwarded this message on 2/12/2018 11:53 AM

CfA FOIA-HHS-Healt... ✓

498 KB

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To whom it may concern:

Attached, please find a Freedom of Information Act Request. Please do not hesitate to contact me with any questions or concerns regarding this request.

Sincerely,  
Katie O'Connor

Katie O'Connor  
Legal Counsel\*  
Campaign for Accountability  
[www.campaignforaccountability.org](http://www.campaignforaccountability.org)  
[@Accountable\\_Org](https://twitter.com/Accountable_Org)

\*licensed to practice in Massachusetts and Georgia

C A M P A I G N F O R

ACCOUNTABILITY

November 8, 2017

By email: [FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

Michael Marquis  
Freedom of Information Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Freedom of Information Request**

Dear Mr. Marquis:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and Department of Health and Human Services (“HHS”) implementing regulations, 45 C.F.R. Part 5.

Specifically, CfA requests that HHS produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the Affordable Care Act (“ACA”).
2. All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Resolution 1628 or any other efforts to repeal or reform the ACA.
3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.
4. All calendar entries reflecting meetings between HHS and representatives of the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council regarding House Joint Resolution 43 or any other efforts to exclude Planned Parenthood or similar organizations from federal funding.

Please provide all responsive records from January 20, 2017 to the date the search is conducted.

Department of Health and Human Services

November 8, 2017

Page 2

By way of background, opponents of the ACA began discussing ways to repeal and replace it before the ink even dried on the bill.<sup>1</sup> After the 2016 election, in which the Republican Party gained control of the White House and both chambers of Congress, plans for a replacement began to solidify. The American Health Care Act of 2017 was introduced in the U.S. Congress on March 6, 2017.<sup>2</sup> The House successfully passed the legislation on May 4, 2017,<sup>3</sup> but it failed a full Senate vote on July 28, 2017.<sup>4</sup> The legislation took five forms during that time, and each varied significantly in its treatment of the individual mandate, pre-existing conditions, essential health benefits, and other critical provisions. In all but one iteration, though, the legislation maintained its negative treatment of Planned Parenthood, promising to withhold Medicaid reimbursements to the organization for a one-year period. Four of the five versions of the bill included this provision despite the Congressional Budget Office's warning that it would result in the loss of access to reproductive healthcare services for 15 percent of people living in areas without other health care clinics who serve low-income populations.<sup>5</sup> Though the legislation nearly collapsed following the Senate floor vote, work continues in the ongoing broader attempt to repeal and/or replace the ACA.<sup>6</sup>

Meanwhile, Congress and the administration did achieve some success in stripping funding from Planned Parenthood by other means. On April 13, 2017, President Trump signed House Joint Resolution 43, nullifying an HHS rule that prohibited states from denying Title X funds to Planned Parenthood and other abortion providers.<sup>7</sup> Notably, Marjorie Dannenfelser, president of the Susan B. Anthony List, and Penny Nance, president of Concerned Women for America, attended the bill signing. Indeed, the Susan B. Anthony List, Concerned Women for America, March for Life, American Values, and Family Research Council have expended significant resources to strip Planned Parenthood of any federal funding throughout the years, and have worked closely with this Congress and administration on health care reform efforts. With the exception of March for Life, each organization joined the "Pro-Life Coalition" in support of the

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<sup>1</sup> Ed O'Keefe, The House has voted 54 times in four years on Obamacare. Here's the full list., *The Washington Post*, March 21, 2014, available at <https://www.washingtonpost.com/news/the-fix/wp/2014/03/21/the-house-has-voted-54-times-in-four-years-on-obamacare-heres-the-full-list/>.

<sup>2</sup> Press Release, Office of the Speaker of the House Paul Ryan, 115<sup>th</sup> Congress, Statement on Introduction of the American Health Care Act, March 6, 2017, available at <https://www.speaker.gov/press-release/statement-introduction-american-health-care-act>.

<sup>3</sup> Rachel Leah, American Health Care Act passes the House, but its future is still uncertain, *Salon*, May 4, 2017, available at <http://www.salon.com/2017/05/04/american-health-care-act-passes-the-house-but-its-future-is-still-uncertain/>.

<sup>4</sup> Juliet Eilperin, Sean Sullivan, and Kelsey Snell, Senate rejects measure to partly repeal Affordable Care Act, dealing GOP leaders a major setback, *The Washington Post*, July 27, 2017, available at [https://www.washingtonpost.com/powerpost/senate-gop-leaders-work-to-round-up-votes-for-modest-health-care-overhaul/2017/07/27/ac08fc40-72b7-11e7-8839-ec48ec4cae25\\_story.html](https://www.washingtonpost.com/powerpost/senate-gop-leaders-work-to-round-up-votes-for-modest-health-care-overhaul/2017/07/27/ac08fc40-72b7-11e7-8839-ec48ec4cae25_story.html).

<sup>5</sup> Congressional Budget Office, 115<sup>th</sup> Congress, *Cost Estimate of the American Health Care Act*, March 13, 2017, available at <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf>.

<sup>6</sup> Dylan Scott, Republicans wind up one last Hail Mary to repeal Obamacare, *Vox*, Sept. 13, 2017, available at <https://www.vox.com/policy-and-politics/2017/9/12/16290424/obamacare-repeal-cassidy-graham-can-it-pass>.

<sup>7</sup> Jessie Hellmann, Trump signs bill targeting funding for abortion providers, *The Hill*, April 13, 2017, available at <http://thehill.com/policy/healthcare/328674-trump-signs-bill-targeting-planned-parenthood-funding>.

Department of Health and Human Services

November 8, 2017

Page 3

Trump-Pence ticket, based largely on Trump's commitment to defund Planned Parenthood.<sup>8</sup> Vice President Pence has frequently relied on the leaders of Concerned Women for America, March for Life, and the Susan B. Anthony List to aid in efforts to push the health care bill through Congress.<sup>9</sup> The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence HHS as it counsels the administration and Congress on health care reform and on the future of funding for Planned Parenthood, both matters of paramount public concern. The requested records would give the public that opportunity.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>10</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>11</sup>

<sup>8</sup> Press Release, The Susan B. Anthony List, Trump Campaign Announces National Co-Chairs of Pro-Life Coalition, Sept. 27, 2016, available at <https://www.sba-list.org/newsroom/press-releases/trump-campaign-announces-national-co-chairs-pro-life-coalition>.

<sup>9</sup> Mike DeBonis and John Wagner, Republicans try to revive health-care effort as leaders seek to temper expectations, *The Washington Post*, April 4, 2017, available at [https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748\\_story.html?utm\\_term=.133f53e25e6a](https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748_story.html?utm_term=.133f53e25e6a); Christine Grimaldi, Mike Pence Had a Meeting With Anti-Choice Activists He Doesn't Want You to Know About, *Rewire*, July 11, 2017, available at <https://rewire.news/article/2017/07/11/mike-pence-meeting-anti-choice-activists-doesnt-want-know/>.

<sup>10</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149—150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—956 (D.C. Cir. 2016).

<sup>11</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still

Department of Health and Human Services

November 8, 2017

Page 4

In addition, please note that in conducting a “reasonable search” as required by law, HHS must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HHS’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>12</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but HHS’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with HHS to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>13</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>14</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>15</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>16</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are

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leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>12</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>13</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>14</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>15</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>16</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

Department of Health and Human Services

November 8, 2017

Page 5

so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>17</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with HHS before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>18</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>19</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

As noted above, the organizations whose communications with HHS are the subject of this request have played significant roles in supporting this administration and Congress’s efforts to repeal or reform the ACA. They have also committed extensive resources to efforts to defund Planned Parenthood. The records CfA seeks will help the public understand whose interests are being considered as the administration and Congress make decisions that have a profound impact on people’s lives.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA’s financial interest. CfA is committed to protecting the public’s right to

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<sup>17</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>18</sup> *See, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>19</sup> 45 C.F.R. § 5.54(a).

Department of Health and Human Services

November 8, 2017

Page 6

be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

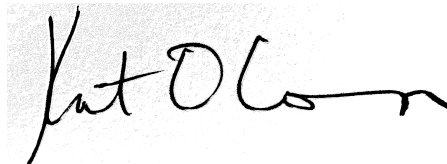
Accordingly, CfA qualifies for a fee waiver.

### **Conclusion**

CfA looks forward to working with HHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor", is written over a light gray rectangular background.

Katie O'Connor  
Legal Counsel



# EXHIBIT B

## FOIA Request re: religious liberty executive order

KO ✓

Katie O'Connor

Wed 11/8/2017, 10:53 AM

FOIARequest@hhs.gov ✕



Reply all | ✓

FOIA

You forwarded this message on 2/12/2018 11:53 AM

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To whom it may concern:

Attached, please find a Freedom of Information Act Request. Please do not hesitate to contact me with any questions or concerns regarding this request.

Sincerely,  
Katie O'Connor

Katie O'Connor  
Legal Counsel\*  
Campaign for Accountability  
[www.campaignforaccountability.org](http://www.campaignforaccountability.org)  
[@Accountable\\_Org](https://twitter.com/Accountable_Org)

\*licensed to practice in Massachusetts and Georgia

C A M P A I G N F O R

ACCOUNTABILITY

November 8, 2017

By email: [FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

Michael Marquis  
Freedom of Information Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Freedom of Information Request**

Dear Mr. Marquis:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and Department of Health and Human Services (“HHS”) implementing regulations, 45 C.F.R. Part 5.

Specifically, CfA requests that HHS produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and representatives of Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America about the May 4 “Promoting Free Speech and Religious Liberty” executive order, the HHS rules that are being drafted in response to that order, or any other efforts to alter or weaken the Affordable Care Act’s contraceptive mandate.
2. All calendar entries reflecting meetings between HHS and representatives of Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America about the May 4 “Promoting Free Speech and Religious Liberty” executive order, the HHS rules that are being drafted in response to that order, or any other efforts to alter or weaken the Affordable Care Act’s contraceptive mandate.

Please provide all responsive records from January 20, 2017 to the date the search is conducted.

By way of background, on May 4, 2017, President Trump signed the “Presidential Executive Order Promoting Free Speech and Religious Liberty,” which directed the Secretary of HHS to “consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under” the Affordable Care Act

Department of Health and Human Services

November 8, 2017

Page 2

(“ACA”).<sup>1</sup> The ACA’s preventive-care mandate requires employer-provided health insurance plans to cover a range of no-cost preventive health services, such as cholesterol screenings and influenza immunizations.<sup>2</sup> When the ACA was signed, one service in particular – contraception – immediately became the subject of significant controversy and protracted policy and legal battles. Some employers claimed a religious objection to the provision of birth control to their employees. At first, objecting employers worked with the Obama administration to find a compromise that would accommodate women’s needs while respecting religious liberty.<sup>3</sup> When a compromise failed, objecting employers went to court, and cases are still pending in numerous courts of appeals.<sup>4</sup> The birth control mandate also became a major political issue, and continued to be an issue during the 2016 presidential campaign.<sup>5</sup> It is therefore unsurprising that with a new party in the White House came a new attempt to dismantle the birth control mandate. Following the signing of the executive order in May, HHS quickly began drafting rules that could be released at any time and that would weaken the birth control mandate by exempting significantly more employers from it.<sup>6</sup>

Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America, the organizations whose communications with HHS are the subject of this request, have been central to the ongoing opposition to the birth control mandate and to the legal and political attempts to invalidate it. Alliance Defending Freedom represented plaintiffs in a number of the legal challenges to the mandate, including both sets of cases to reach the Supreme Court.<sup>7</sup> The Susan B. Anthony List and Concerned Women for America filed

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<sup>1</sup> Exec. Order No. 13,798, 82 Fed. Reg. 21, 675 (May 4, 2017), *available at* <https://www.federalregister.gov/documents/2017/05/09/2017-09574/promoting-free-speech-and-religious-liberty>.

<sup>2</sup> National Conference of State Legislatures, *Preventive Services Covered Under the Affordable Care Act* (2014), <http://www.ncsl.org/research/health/american-health-benefit-exchanges-b.aspx>.

<sup>3</sup> Helene Cooper and Laurie Goodstein, *Rule Shift on Birth Control Is Concession to Obama Allies*, *New York Times*, Feb. 10, 2012, *available at* <http://www.nytimes.com/2012/02/11/health/policy/obama-to-offer-accommodation-on-birth-control-rule-officials-say.html>.

<sup>4</sup> John Solomon, *Groups: Justice court filings defy Trump promises on religious freedom*, *The Hill*, Aug. 23, 2017, *available at* <http://thehill.com/homenews/administration/347728-groups-justice-court-filings-defy-trump-promises-on-religious-freedom>.

<sup>5</sup> Miriam Berg, *Planned Parenthood Action Fund, What’s at Stake for Access to Affordable Birth Control in the 2016 Election?* (2016), <https://www.plannedparenthoodaction.org/blog/whats-stake-access-affordable-birth-control-2016-election>.

<sup>6</sup> Alice Ollstein, *Legal Battle Brewing As Trump’s HHS Prepares To Ax Free Birth Control Rule*, *Talking Points Memo*, Aug. 21, 2017, *available at* <http://talkingpointsmemo.com/dc/trump-birth-control-rule-hhs>.

<sup>7</sup> Brief for Petitioners in Nos. 15-35, 15-105, 15-119, & 15-191, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), *available at* <http://www.scotusblog.com/wp-content/uploads/2016/01/Little-Sisters-Merits-Brief.pdf>; Brief for Petitioners, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), *available at* <http://www.adfmedia.org/files/ConestogaMeritsBrief.pdf>.

Department of Health and Human Services

November 8, 2017

Page 3

amicus briefs in both cases.<sup>8</sup> The Heritage Foundation has published prolifically on the subject.<sup>9</sup> The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence the administration and HHS as the executive order and promulgating rules were being drafted. The requested records would give the public that opportunity.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to

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<sup>8</sup> Brief of Amici Curiae Women’s Public Policy Groups and a Coalition of Female State Legislative and Executive Branch Officials in Support of Nongovernment Parties, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/02/CWA-HobbyLobby-Conestoga-Amicus.pdf>; Brief Amicus Curiae of Concerned Women for America, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), available at <http://www.scotusblog.com/wp-content/uploads/2016/01/Concerned-Women-for-America-LSP-Amicus-Brief.pdf>; Brief for Amicus Curiae Michael J. New, Ph.D., Associate Scholar, Charlotte Lozier Institute, in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), available at <http://www.scotusblog.com/wp-content/uploads/2016/01/Charlotte-Lozier-Institute-LSP-Amicus.pdf>. The Charlotte Lozier Institute is the 501(c)(3) research and education institute of the Susan B. Anthony List.

<sup>9</sup> John Malcolm, The Heritage Foundation, *Obama v. Religious Liberty: How Legal Challenges to the HHS Contraceptive Mandate Will Vindicate Every American’s Right to Freedom of Religion* (2012), <http://www.heritage.org/health-care-reform/report/obama-v-religious-liberty-how-legal-challenges-the-hhs-contraceptive>; Edmund Haislmaier and Thomas Messner, The Heritage Foundation, *On Contraception Mandate, the Obama Administration’s Potential Proposed “Accommodation” Fails to Protect Religious and Moral Conscience* (2012), <http://www.heritage.org/health-care-reform/report/contraception-mandate-the-obama-administrations-potential-proposed>; Elizabeth Slattery and Sarah Torre, The Heritage Foundation, *Obamacare Anti-Conscience Mandate at the Supreme Court* (2014), <http://www.heritage.org/health-care-reform/report/obamacare-anti-conscience-mandate-the-supreme-court>; Mark Schreiber and Elizabeth Fender, The Heritage Foundation, *Employee Health Care Coverage and the “War on Women”* (2015), <http://www.heritage.org/health-care-reform/report/employee-health-care-coverage-and-the-war-women>; Sarah Torre, The Heritage Foundation, *Religious Liberty at the Supreme Court: Little Sisters of the Poor Take on Obamacare Mandate* (2016), <http://www.heritage.org/religious-liberty/report/religious-liberty-the-supreme-court-little-sisters-the-poor-take-obamacare>.

Department of Health and Human Services

November 8, 2017

Page 4

the Federal Records Act and FOIA.<sup>10</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>11</sup>

In addition, please note that in conducting a “reasonable search” as required by law, HHS must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HHS’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>12</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but HHS’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with HHS to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>13</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>14</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of

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<sup>10</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149–150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–956 (D.C. Cir. 2016).

<sup>11</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>12</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>13</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>14</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

Department of Health and Human Services

November 8, 2017

Page 5

disclosing the sought-after information.”<sup>15</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>16</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>17</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with HHS before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>18</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>19</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

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<sup>15</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

<sup>16</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>17</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>18</sup> *See, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>19</sup> 45 C.F.R. § 5.54(a).



Department of Health and Human Services

November 8, 2017

Page 6

As noted above, Alliance Defending Freedom, the Heritage Foundation, the Susan B. Anthony List, and Concerned Women for America have been actively involved in the legal and political challenges to the ACA's birth control mandate. Meanwhile, studies have shown that contraceptive use has numerous tangible benefits for women and families, and that cost can be an insurmountable barrier to regular contraceptive use. As the ACA went into effect between fall 2012 and spring 2014, the proportion of privately insured women who paid nothing out of pocket for the pill increased from 15% to 67%, with similar changes for other contraceptives.<sup>20</sup> In other words, the birth control mandate is working to assist women and families in obtaining the birth control they need. Against this backdrop, the public deserves to know who is behind the recent efforts to weaken the mandate. The requested documents will help the public to determine whether the executive order and HHS rules are a result of pressure from the above-listed organizations.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA's financial interest. CfA is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

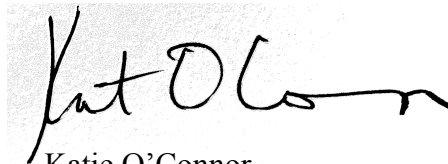
Accordingly, CfA qualifies for a fee waiver.

### **Conclusion**

CfA looks forward to working with HHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor", is written over a light gray rectangular background.

Katie O'Connor  
Legal Counsel

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<sup>20</sup> Adam Sonfield, Guttmacher Institute, What Is at Stake with the Federal Contraceptive Coverage Guarantee? (2017), <https://www.guttmacher.org/gpr/2017/01/what-stake-federal-contraceptive-coverage-guarantee>.



## CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

<b>I. (a) PLAINTIFFS</b> CAMPAIGN FOR ACCOUNTABILITY  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Carey S. Busen Baker & Hostetler LLP Washington Square, 1050 Connecticut Ave., NW, Ste 1100 Washington, DC 20006; 202-861-1568	ATTORNEYS (IF KNOWN)
<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b>

<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)
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	PTF	DFT		PTF	DFT
Citizen of this State	<input checked="" type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input checked="" type="radio"/> 4
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input checked="" type="radio"/> <b>E. General Civil (Other)</b>			
OR			
<input type="radio"/> <b>F. Pro Se General Civil</b>			

<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Plaintiff is seeking declaratory and injunctive relief to compel compliance with requirements of FOIA (5 U.S.C. § 522, 28 U.S.C. § 1361)

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 2/23/2018	SIGNATURE OF ATTORNEY OF RECORD: /s/ Carey S. Busen
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

\_\_\_\_\_  
*Plaintiff*

v.

U.S. Department of Health and Human Services

\_\_\_\_\_  
*Defendant*

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Civil Action No. 18-cv-466

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington, DC 20201

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 18-cv-466

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

U.S. Department of Health and Human Services

*Defendant*

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Civil Action No. 18-cv-466

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Jessie K. Liu  
U.S. Attorney for the District of Columbia  
555 4th Street NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 18-cv-466

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

U.S. Department of Health and Human Services

*Defendant*

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Civil Action No. 18-cv-466

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Jeff Sessions  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 18-cv-466

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: